

Commentary: Legislators—How Did the Deciders Decide? Who Shall Serve as Their Experts?

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Weisleder presents a retrospective empirical inquiry into the decision tree of state legislators who chose the age at which minors could consent to substance abuse treatment in their respective jurisdictions. Current medical practices and the developmental research into the cognitive capacities of adolescents did not figure prominently. Readers, including current and future political advocates, are provided with an informed window into the political processes of the making of a law that affects the practice of medicine. Weisleder is reminded that politics and science are uncomfortable bedfellows.

J Am Acad Psychiatry Law 35:323–4, 2007

Weisleder's review¹ of the inconsistencies among American states on the age at which minors can consent to substance abuse treatment offers readers a look at the process of public policy decision-making as applied to the question of the age at which an adolescent, on his or her own authority, can give independent consent to substance abuse treatment. Though the article is an investigation of this single mental health subject, it illuminates the political process involved in any one of several mental health laws about which psychiatry and other mental health disciplines may proffer substantial scientific expertise.

Weisleder observes that there are significant jurisdictional differences among several states regarding the adolescent age of consent. Twenty-four states that have laws allowing adolescent access to treatment do not specify the age of independent consent. The 20 states that stipulate the age demonstrate a range (12–16 years) rather than a consensus.

Weisleder asks, "What information was used by legislators to determine the age at which a minor may consent to confidential substance abuse treatment?" (Ref. 1, p 317). "Some [lawmakers], however, appear

to have made decisions without a clear foundation" (Ref. 1, p 317).

What should be a sound foundation for a legislative choice about juvenile access to medical care? Weisleder had anticipated that legislators would consider research documenting that 14-year-olds may demonstrate the competency equivalent to that of an adult. He thought they also might have been influenced by the tradition of English Common Law, in which the chosen age was also 14. He understood that lawmakers might consider their own political principles or the age of consent for adolescents in other legal arenas. The result of the analysis of his hypotheses was that he was surprised, and not happily.

In a significant example of political research, Weisleder contacted secretaries of state to identify the "legislative history" of a law that ideally contains the written and spoken public record and the specific lawmakers involved. He then contacted the legislators. If they were unavailable, he contacted state law librarians and legislative staff. The details of the responses noted in Table 2 offer an important lesson in civics.

Legislators in many jurisdictions cited their consideration of the age at which other legal rights were provided to adolescents. The list included the right to consent to other medical treatments, the right to consent to living situations in a custody dispute, the

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right to consent to sexual relations, and the right to consent to marriage.

Experts in psychiatry and psychology, when asked about questions of an individual's capacity to give informed consent, often respond that an individual's capacity is task specific. An individual may be capable of understanding the risks and benefits of a decision in one arena, but not in another.

However, lawmakers (legislators and judges alike) historically have been hesitant to make too many rules for too many special arenas. They prefer one standard. It is one explanation of why we have to apply the *Dusky v. United States*² standard to a variety of judicial competencies. Weisleder's research bears out that continuing sensibility of lawmakers: to make one general rule that will apply to several different situations.

The developmental science of the cognitive capacities of adolescents did play a role in some jurisdictions. Lawmakers may have also noted that the index population (drug-abusing adolescents) under consideration was a different population from non-drug-abusing adolescents, and the cognitive capacities of the two groups may also have been different. In any regard, it was evident that neither science nor clinical practice was a significant consideration for these legislators.

The respondents did not overtly reference their own community's prevailing values about adolescent rights versus parental authority. Laws granting adolescents legal rights come at the direct expense of parental authority, and those parents may vote. California chose 12 years of age, while in Utah the law is wholly silent, and clinical decisions are decided on a case-by-case basis. It is likely that these widely divergent legal choices reflect differences in the respective community values. Some respondents acknowledged the roles of politics and compromise in the process.

What I suspect would not have been shared in the responses to Weisleder's queries were the personal and political pressures that influence legislators. For example, one may have had a brother-in-law whose addicted adolescent was in treatment. Another legislator may have chosen to reward or punish a colleague because of other considerations. A colleague

to whom this subject was especially important for personal reasons may have been willing to trade support for a lower or higher age if another lawmaker provided support for other legislation. Recent media reports might play a role. Politics is unapologetically about the application of power.

Weisleder noted that our medical discipline was largely ignored in many jurisdictions. He was concerned with the lack of a scientific foundation for legal decisions about medicine. He implied that those decisions should have been based on sound medical practices and the scientifically demonstrated cognitive capacities of adolescents.

Should we feel marginalized? What about our future service as advisors in the political process? As Weisleder's article illustrates, though we may believe that we have scientific truth on our side, science has only one of many seats at the table and, if the current study has broader applicability, a small seat at that. Though we may view ourselves as nonpartisan, scholarly, scientific experts, we should not expect to place ourselves outside a process that reaches decisions through the application of raw power in the context of compromise. In a political process, all participants are by definition partisan. Everyone has a stake. An "unbiased participant" is an oxymoron in the political process.

Experts who attempt to influence a political process should be prepared to be viewed as one of many partisans to be heard. They must be able, without shame or guilt, to advocate clearly for their scientific agenda and for the political base of the authority for that advocacy.

Acknowledgments

The author thanks Peter Randolph, MD, of the Tufts-New England Medical Center Department of Psychiatry, formerly Director and Superintendent of the Bay Cove Community Mental Health Center, for his thoughtful review of this commentary. Dr. Randolph served as his program's liaison to the Massachusetts Statehouse for 29 years.

References

1. Weisleder P: Inconsistencies among American states on the age at which minors can consent to substance abuse treatment. *J Am Acad Psychiatry Law* 35:317-22, 2007
2. *Dusky v. United States*, 362 U.S. 402 (1960)